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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 JULIE S. PUTTERMAN,)
8 Plaintiff,) CASE NO. C18-0376RSM
9 v.) ORDER GRANTING IN PART AND
10 SUPREME CHAIN LOGISTICS, LTD., a) DENYING IN PART MOTION TO
11 foreign corporation, *et al.*,) STRIKE
12 Defendants.)
13 _____)

14 **I. INTRODUCTION**

15 This matter comes before the Court on Plaintiff's Motion to Strike Affirmative Defenses
16 pursuant to Federal Rule of Civil Procedure 12(f). Dkt. #18. Plaintiff argues that a number of
17 Defendants' affirmative defenses should be stricken because they are insufficiently pled. *Id.*
18 Defendants Supreme Chain Logistics and Davinder Neele respond that their defenses should not
19 be stricken because they provide fair notice to Plaintiff.¹ Dkt. #21. Having reviewed the parties'
20 briefing and considered the arguments set forth therein, the Court now GRANTS IN PART and
21 DENIES IN PART Plaintiff's motion.
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23 **II. BACKGROUND**

24 Plaintiff brings this case for personal injuries arising from an automobile accident that
25 occurred on southbound I-5 in Seattle, WA, on February 26, 2015. Dkt. #1-1. Plaintiff named
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28 ¹ This motion does not pertain to the other named Defendant, State Farm Mutual Automobile Insurance Company.

as two of the Defendants the driver of the tractor-trailer involved in the accident (Mr. Neele), and Mr. Neele's employer (Supreme Chain Logistics). *Id.* Mr. Neele and Supreme Chain Logistics filed their Answer to the Complaint on April 17, 2018, raising 16 affirmative defenses. Dkt. #12. Plaintiff now moves to strike defenses 1, 2, 5, 7-14 and 16. Dkt. #18 at 4.

III. DISCUSSION

A. Legal Standard

Under Federal Rule of Civil Procedure 12(f), a district court "may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." "[T]he function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial" *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983). To determine whether a defense is "insufficient" under Rule 12(f), the Court asks whether it gives the plaintiff fair notice of the defense. *Simmons v. Navajo County*, 609 F.3d 1011, 1023 (9th Cir. 2010) (citing *Wyshak v. City Nat'l Bank*, 607 F.2d 824, 827 (9th Cir. 1979)). Fair notice generally requires that defendants state the nature and grounds for the affirmative defense. *Employee Painters' Trust v. Pac. Nw. Contractors, Inc.*, 2013 U.S. Dist. LEXIS 59618, 2013 WL 1774628, at *4 (W.D. Wash. Apr. 25, 2013).

B. Affirmative Defense One

Plaintiff first moves to strike Defendants' Affirmative Defense One, which states:

1. Plaintiff's action should be dismissed in whole or in part because Plaintiff's alleged damages, if any, may not have been caused by Defendants.

Dkt. #12 at *Affirmative Defenses*, ¶ 1. Plaintiff argues that this defense should be stricken because it fails to provide sufficient facts by which the Plaintiff can determine the nature and grounds for the defense. Dkt. #18 at 5. Defendants respond that this defense is proper and provides fair

1 notice because the accident occurred in the middle of a busy morning commute, and therefore
2 there are many factors that could have contributed to the accident. Dkt. #21 at 6. The Court
3 agrees with Defendants that this defense gives fair notice, and therefore it will not be stricken.

4 **C. Affirmative Defense Two**

5 Although Plaintiff addresses Affirmative Defense Two in its motion, Defendants have
6 agreed to consolidate this defense with Affirmative Defense Three, and therefore this defense no
7 longer appears to be at issue. Dkts. #18 at 4, #21 at 8 and #23 at 2-3.

9 **D. Affirmative Defense Five**

10 Plaintiff next moves to strike Defendants' Affirmative Defense Five, which states:

11 Defendants assert herein all defenses stated in FRCP 12(b) in so far as they
12 may be applicable and thus are not waived.

13 Dkt. #12 at *Affirmative Defenses*, ¶ 5. Plaintiff argues that this is an improper conclusory
14 allegation, and she is left to guess as to which, if any, 12(b) defenses are actually being asserted
15 as no facts have been pled. Dkt. #18 at 7. Defendants argue that there are questions remaining
16 as to whether Defendants were properly served in this matter, and that it satisfies the fair notice
17 standard. Dkt. #21 at 8. The Court agrees with Plaintiff that this is simply a catch-all conclusory
18 allegation that provides no fair notice of the basis of the defense. *Dawson v. Genesis Credit*
19 *Management, LLC*, 2017 U.S. Dist. LEXIS 103073, *2 (W.D. Wash. June 26, 2017) ("Using
20 affirmative defenses as 'placeholders' without any factual support or specificity is
21 inappropriate."). If Defendants believe that deficiency of service is an issue, they can amend the
22 defense to be more specific. Accordingly, this defense will be STRICKEN with leave to amend.
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1 **E. Affirmative Defense Seven**

2 Plaintiff next moves to strike Defendants' Affirmative Defense Seven. Dkt. #18 at 8.
3 Defendants have agreed to withdraw this defense. Dkt. #21 at 9. Therefore this defense is no
4 longer at issue.

5 **F. Affirmative Defense Eight**

6 Plaintiff next moves to strike Defendants' Affirmative Defense Eight, which states:
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8 Plaintiff's claims may be barred by estoppel, waiver, or laches.
9 Dkt. #12 at *Affirmative Defenses*, ¶ 8. As with Affirmative Defense Five, Plaintiff argues that
10 this is an improper conclusory allegation, and she is left to guess as to which, if any, of these
11 defenses are actually being asserted as no facts have been pled. Dkt. #18 at 8. Plaintiff also
12 argues that the defense of laches cannot be raised because the action was filed within the relevant
13 statutory period. *Id.* Defendants argue that laches can be raised, and that the defense satisfies
14 the fair notice standard in any event. Dkt. #21 at 9-10. The Court agrees with Plaintiff that this
15 defense, as written, provides no fair notice of the basis of the defense. *Dawson, supra*, 2017 U.S.
16 Dist. LEXIS 103073, *2. If Defendants believe that laches, waiver or estoppel applies in this
17 case, they can amend the defense to be more specific. Accordingly, this defense will be
18 STRICKEN with leave to amend.
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21 **G. Affirmative Defense Nine**

22 Plaintiff next moves to strike Defendants' Affirmative Defense Nine. Dkt. #18 at 9.
23 Defendants have agreed to withdraw this defense. Dkt. #21 at 10. Therefore, this defense is no
24 longer at issue.
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26 **H. Affirmative Defense Ten**

27 Plaintiff next moves to strike Defendants' Affirmative Defense Ten, which states:
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1 Plaintiff's claims for relief are limited and/or barred to the extent that Plaintiff
2 or other parties failed to take reasonable steps to preserve material evidence
necessary for Defendants [sic] inspection, or for use in Defendants' defense.

3 Dkt. #12 at *Affirmative Defenses*, ¶ 10. Plaintiff asserts that this is not an affirmative defense
4 and therefore it should be stricken. Dkt. #18 at 9. Defendants assert it is proper. Dkt. #21 at 10-
5 11. The Court disagrees with Defendants. Preservation of evidence can be addressed through
6 discovery, but is not an appropriate affirmative defense. Therefore, this Defense will be
7 STRICKEN without leave to amend.
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9 **I. Affirmative Defense Twelve**

10 Plaintiff next moves to strike Defendants' Affirmative Defense Twelve, which states:

11 Some or all of Plaintiff's claims may be barred by the applicable statute of
12 limitations.

13 Dkt. #12 at *Affirmative Defenses*, ¶ 12. Plaintiff argues that this type of "placeholder" defense is
14 inappropriate. Dkt. #18 at 9-10. Defendants assert that there are questions of fact as to whether
15 Defendants were properly served, and therefore this defense gives Plaintiff fair notice. Dkt. #21
16 at 11. The Court disagrees with Defendants. Whether Defendants were properly served is
17 irrelevant to whether the claims were filed within the statute of limitations. This defense is
18 otherwise vague and conclusory. *Dawson, supra*, 2017 U.S. Dist. LEXIS 103073, *2. If
19 Defendants believe that any of the claims were filed outside of the applicable statute of
20 limitations, they can amend the defense to be more specific. Accordingly, this defense will be
21 STRICKEN with leave to amend.
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24 **J. Affirmative Defense Thirteen**

25 Plaintiff next moves to strike Defendants' Affirmative Defense Thirteen, which states:

26 The damages, if any, sustained by Plaintiff may have been the sole and
27 proximate result of an unavoidable accident.
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1 Dkt. #12 at *Affirmative Defenses*, ¶ 13. Plaintiff asserts that this is not an appropriate affirmative
2 defense and therefore it should be stricken. Dkt. #18 at 10. Defendants respond that this is a
3 proper defense. Dkt. #21 at 12. The Court agrees with Defendants. Washington courts have
4 determined that “unavoidable accident” does not necessarily have to be pleaded, but does not
5 preclude the pleading of such a defense. *See Hardman v. Younkers*, 15 Wn.2d 483, 491-92, 131
6 P.2d 177 (1942). Accordingly, the Court declines to strike this defense.
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8 **K. Affirmative Defense Fourteen**

9 Plaintiff next moves to strike Defendants’ Affirmative Defense Fourteen. Dkt. #18 at 10.
10 Defendants have agreed to withdraw this defense. Dkt. #21 at 12. Therefore this defense is no
11 longer at issue.
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13 **L. Affirmative Defense Sixteen**

14 Finally, Plaintiff moves to strike Defendants’ Affirmative Defense Sixteen, which states:

15 Defendants reserve the right to amend this Answer, to assert additional
16 Affirmative Defenses, cross-claims, or counter claims based upon future
17 discovery in this case. Further, nothing contained in this Answer should be
18 construed as a waiver of any such additional defenses or claims.

19 Dkt. #12 at *Affirmative Defenses*, ¶ 16. Plaintiff asserts this affirmative defense is improper, and
20 Defendants may not reserve the right to assert affirmative defenses. Dkt. #18 at 11. Defendants
21 respond that this defense is appropriate, as it is nothing more than a statement of an
22 uncontroverted fact. Dkt. #21 at 12. The Court disagrees with Defendants. Using affirmative
23 defenses as “placeholders” without any factual support or specificity is inappropriate. *Dawson*,
24 *supra*, 2017 U.S. Dist. LEXIS 103073, *2. Accordingly, this defense is STRICKEN without
25 leave to amend.
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IV. CONCLUSION

Having reviewed Plaintiff's motion to strike, Defendants' opposition thereto, and the reply in support thereof, along with the remainder of the record, the Court hereby finds and ORDERS:

1. Plaintiff's Motion to Strike (Dkt. #18) is GRANTED IN PART AND DENIED IN PART as set forth above.
2. **No later than ten (10) days from the date of this Order**, Defendants shall file an Amended Answer conforming to the rulings in this Order.
3. Nothing in this Order precludes Plaintiff from moving to strike any amended affirmative defenses if she feels such action is necessary.

DATED this 30 day of May, 2018.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE